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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,249	08/06/2003	Donald C. Roe	8556C	9458

27752 7590 09/27/2006

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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EXAMINER

BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 09/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/635,249

Applicant(s)

ROE ET AL.

Examiner

Michael G. Bogart

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-20 is/are allowed.
- 6) ☒ Claim(s) 7-14 is/are rejected.
- 7) ☒ Claim(s) 15 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Withdrawal of Allowable Subject Matter

The indicated allowability of claims 7-20 is withdrawn in view of the newly discovered reference(s) to Igaue *et al.* (GB 2 244 201 A; hereinafter "Igaue"). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

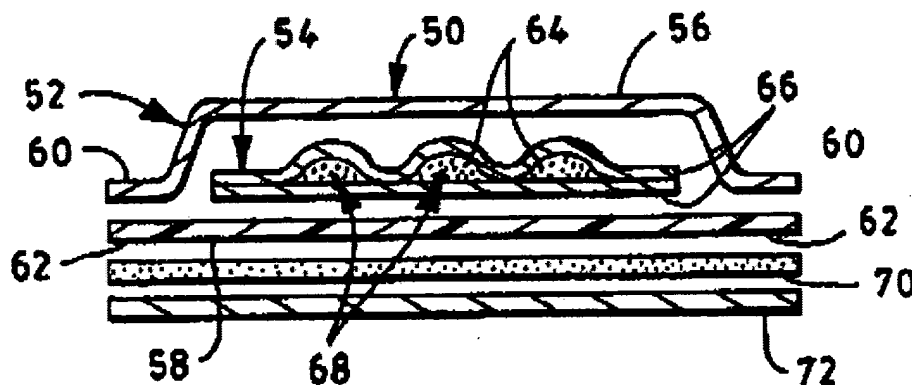
This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 7-10, 12 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Glaug *et al.* (US 5,702,376 A; hereinafter "Glaug") in view of Igaue and Freeland (US 4,990,147).

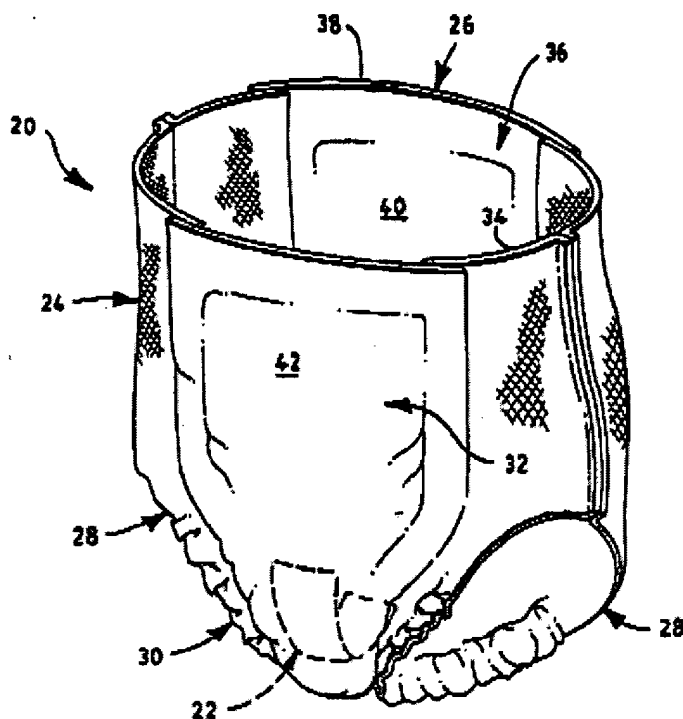
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Regarding claim 7, Glaug teaches a disposable diaper (24) having a longitudinal axis, a first waist region (26), a second waist region (26), and a crotch region (30) interposed therebetween, the disposable diaper (24) comprising:

a temperature change element (22, 54) disposed on an inner surface (40), the temperature change element (54) including a permeable layer (56, 66), an impermeable layer (58) disposed opposite the permeable layer (56, 66), and a temperature change substance (64) interposed therebetween, wherein urine deposited onto the temperature change element can penetrate through the permeable layer (56, 66) in a z direction to the impermeable layer (58) and wherein the impermeable layer (58) prevents urine from passing completely through the temperature change element (54) in the z direction and supports the movement of urine in an x-y plane to wet the temperature change substance (64)(col. 7, lines 16-59; col. 8, lines 21-36)(see figures 1 & 3, infra).

**FIG. 3**

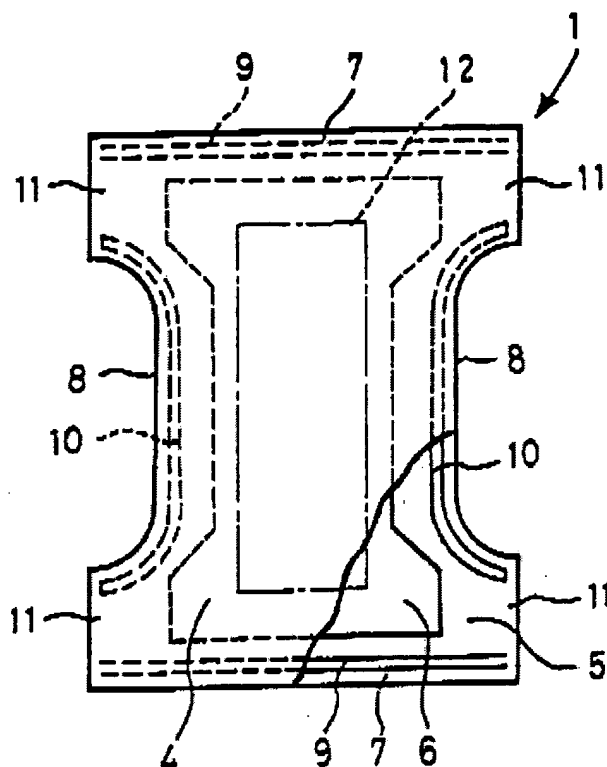
Art Unit: 3761



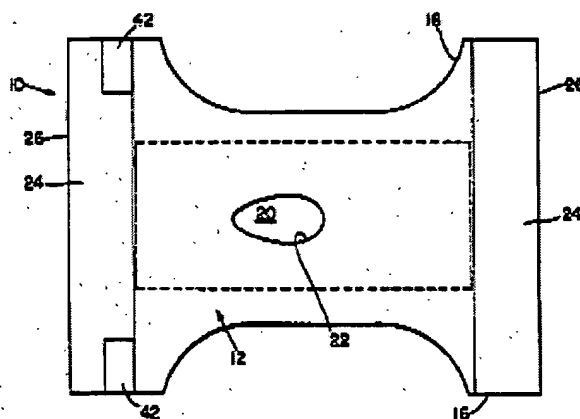
Glaug does not expressly disclose a topsheet, a backsheet and an absorbent core therebetween.

Glaug implies that side elastic materials may be used with that article (col. 14, lines 16-29)(see element (28) in figure 1, supra). Glaug does not expressly disclose that such elastics are elastically foreshortened.

Igaue teaches a training pant (1) comprising a topsheet (4), a backsheet (5) and an absorbent core (6) therebetween (abstract)(see fig. 2, infra).

FIG.2

Freeland teaches an absorbent article (10) and/or a subcomponent (12) thereof, with elastically contracted side edges which allow the article to better conform to the anatomy of a wearer (col. 4, lines 4-12)(see figure 1, *infra*).



At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the elastically contracted side elements of Freeland to the absorbent article of Glaug and Igaue in order to provide for improved fit on a wearer and to provide an art recognized wetness sensation member in a training pant.

Regarding claim 8 Glaug teaches that the temperature change substance (64) includes an endothermic salt (col. 9, lines 46-61).

Regarding claim 9, Freeland teaches an elastically foreshortened topsheet (12).

Regarding claim 10, Glaug teaches that the temperature change element is attached to the inner surface (40) of a training pant (24)(fig. 1).

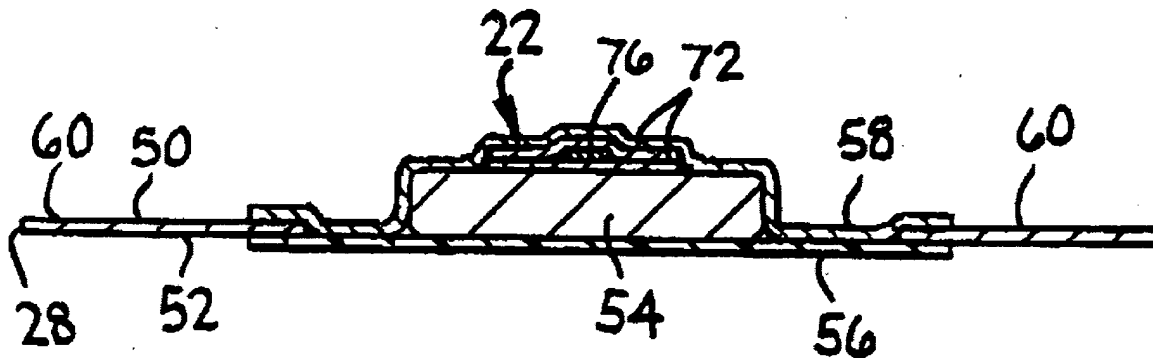
Regarding claim 12, Glaug *et al.* teach that the temperature change element (22, 50) comprises a multiplicity of compartments (68) and the temperature change substance (64) is disposed in each of the compartments (68)(figure 3).

Regarding claim 14, Freeland teaches an elastically foreshortened sheet.

Claims 11 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Glaug, Igaue and Freeland as applied to claims 7-10, 12 and 14 above, and further in view of Brunner *et al.* (US 5,681,298 A; hereinafter "Brunner").

Glaug, Igaue and Freeland do not teach the topsheet of the diaper is the impermeable layer of the temperature change element.

Brunner teaches a temperature change element (22) having a topsheet (58) that is integral with the topsheet of a diaper (20)(see fig. 2, *infra*).



Making what is known in the art to be separable, integral, is not sufficient to patentably distinguish an invention over the prior art. *In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965). At the time of the invention, it would have been obvious to make the topsheet of the device of Glaug, Igaue and Freeland integral with that of the temperature change element as taught by Brunner in order to reduce the number of separate parts so as to facilitate manufacturing efficiency.

Response to Arguments

Applicant's arguments with respect to claims 7-14 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

Claims 17-20 are allowed.

Claims 15 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Regarding claims 15, 16, 19 and 20, the art of record fails to teach a temperature change element structure as described in detail in the rejection of claim 7, supra, that is disposed within a z-fold or leg barrier cuff.

Regarding claims 17 and 18, the art of record fails to teach a temperature change element structure as described in detail in the rejection of claim 7, supra, that has an impermeable layer wrapped around a topsheet.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart
20 September 2006

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

